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SUMMARY RECORD OF THE 1795th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 26 October 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Portugal (Macau) (continued) (CCPR/C/POR/99/4)

1. At the invitation of the Chairperson, the members of the Portuguese delegation resumed their places at the Committee table.

2. Mr. COSTA OLIVEIRA (Portugal), continuing with his delegation's replies to the Committee's follow-up questions in the discussion on the list of issues (CCPR/C/67/L/POR(MAC)/1), and in particular those raised by Mr. Ando, said that the operation of the electoral system would remain essentially unchanged by the amendment mentioned in question 5 of the list. Consultation on the subject between Portugal and China had been minimal. The amendments to the electoral system had been adopted by the Legislative Assembly of Macau, the majority of whose members would be returned as members of the Legislative Assembly of the Macau Special Administrative Region. The only exceptions were one member who had declared that he was unavailable to serve in the new Assembly and all newly appointed members. The composition of the Legislative Assembly, as described in appendix II to the Basic Law of the Macau Special Administrative Region, did not represent a significant change from the current tripartite composition, whereby some members were elected directly, others were elected indirectly and the remainder were appointed. The only difference was that the number of appointed members would remain the same at seven and the number of directly elected members would grow, making the Assembly's composition more democratic.

3. Another question had been asked by Mr. Ando about freedom of assembly and association. Information had already been provided on the relevant Law, which was quite liberal. No prior permission from the police or any other authority was required in order to hold a meeting or demonstration: it was merely necessary to notify the Government, through the police, 72 hours in advance of the event. In the case of a demonstration, that requirement enabled traffic along its route to be regulated properly. The relevant provisions were derived directly from principles in the Portuguese Constitution applicable to Macau, which had been cast in very liberal terms.

4. All civil servants in Macau, irrespective of their nationality, would continue to be civil servants of the Macau Special Administrative Region. In the provisions of the Sino-Portuguese Joint Declaration that had been incorporated into the Basic Law, it was stipulated that the benefits and conditions of service of civil servants would be no less favourable than they had been in the past. Within that framework, Portugal had determined that any civil servants who wished to work in the same capacity in Portugal could apply to do so and would be accepted provided they met the educational qualifications and, of course, nationality requirements.

5. A very interesting issue had been raised with reference to paragraph 27 of the report concerning religious faiths and foreign relations, and a question had been asked about a specific entity that claimed to be subjected to religious persecution, presumably the Falun Gong. The purpose of

paragraph 27 was to emphasize that the law on religious freedom in Macau clearly allowed foreign relations to be maintained by each of the religious faiths as long as the autonomy of Macau's administration was not jeopardized. Macau had a tradition of tolerance, especially in regard to religious freedom. A large number of churches permitted the profession of a whole range of religious faiths, especially within the Evangelical Christian movement. There had been no case, either in the courts or in police records, of discrimination or persecution on grounds of religion.

6. With reference to paragraph 31 of the report, it had been asked whether trade unions existed in Macau, in accordance with ILO Conventions Nos. 87 and 98, Law 4/98/M and various constitutional provisions. The associative movement in Macau predated the foundation of ILO. Trade unions were traditionally called workers' unions, and many of them were registered with trade union confederations. There were approximately 200 workers' unions in Macau, and about 50 of them were registered, which enabled them to vote indirectly for a representative of labour's interests in the Macau Legislative Assembly. Registration was not mandatory, however, for the exercise of political rights. Workers were very well represented in Macau through indirect vote by functional constituencies. They elected one member of the Consultative Council, one member of the Legislative Assembly and, most importantly, several members of the Standing Council for the Coordination of Social Affairs, a tripartite body to which all economic and social legislation was submitted. The Standing Council was quite active, and most of the laws and regulations brought before it were amended during extensive discussions. It was one of the areas in which representatives of workers' unions had a good deal of leverage.

7. Turning to Mr. Yalden's questions, and specifically the one on inequality between men and women, he said that in terms of decision-making at both the national and international levels, the Government and Legislative Assembly of Macau sought to take all necessary steps to guarantee equality. But de facto inequality remained with regard to the principle of equal pay for equal work. That could not be changed by decree, as members of the Committee were certainly aware, and a major educational effort was required. Few complaints of discrimination were received from women, and more must be done to encourage them to come forward and demand action. In the course of its frequent inspections, the Labour Department imposed about 2,500 fines a year, which, for the small territory of Macau and its 450,000 inhabitants, was a fairly large number.

8. With reference to the use of the Chinese language, he said significant efforts had been made in recent years to promote bilingualism in the public sector. In all, 98 per cent of civil servants spoke Chinese. All public forms used within administrative departments were bilingual, and in some places, where there was a significant concentration of residents who spoke a language other than Portuguese or Chinese, they were trilingual. When a person addressed an inquiry to a governmental department in one of the official languages of the territory, he or she had the right to receive an answer in the same language. In the initial stages of application of that principle there had been difficulties in providing speedy responses in Chinese, but those had now been overcome.

9. As to the right of petition, he said that in 1994 two petitions had been received, in 1996 twelve and in 1998 two. The petitions had concerned educational and commercial issues, civil and political rights, labour rights, social security, taxes, speedy administration of justice and religious freedom. Where the petitions identified a legislative vacuum, lawmakers prepared appropriate texts; if a public entity needed to be addressed, that was done. In general, the consequences were decided according to the nature of the petition. There were no agencies for handling petitions, and no sanction or compensation rights were linked to the right of petition. That right had been instituted to make the Legislative Assembly aware of problems that existed and to facilitate their solution. One issue resolved by lawmaking subsequent to petition was that of compensation for victims of violent crime, the former legislative provisions having been found to be unfair.

10. In response to the request for data on the work of the High Commission Against Corruption and Administrative Illegality, he said the number of cases handled in 1996 had been 216, in 1997, 293 and in 1998, 416. Of the total of 925 cases handled in the past three years, 591 had derived from complaints by private citizens. The High Commission had two functions: to combat corruption and to serve as Ombudsman.

11. Lord Colville had requested information on Law 6/97/M aimed at fighting organized crime. Referring to paragraph 14 of the report, he had asked whether the Law violated the principle of non-retroactivity. Paragraph 14 mentioned two separate legal provisions on the possibility of extending a penalty, but the requirements of those provisions were cumulative, not alternative, as the paragraph seemed to suggest. Moreover, such provisions did not apply exclusively to organized crime: they were virtually identical to those in article 77 of the Criminal Code concerning extension of penalties for habitual offenders.

12. Several members of the Committee had expressed concern about the definition of a criminal association. Confusion might have been created by the fact that criminal bodies were referred to variously in the report and by the delegation as secret associations, secret societies and triads. There were currently about 10 court cases concerning persons who allegedly belonged to such associations. In drafting the law on organized crime, a difficult task in any country, extensive consideration had been given to an alternative whereby the onus of proof would have been inverted. Compared with legislation adopted in other countries, Law 6/97/M was not ideal, but its conception was fairly sound. An alleged leader of one of the triads had already been convicted under the Law, and that decision was now under appeal. Macau was in the middle of a war on organized crime, having detained 44 alleged members of triads, of whom 35 were awaiting trial. Decisions in the cases now in court were expected by the end of the year, and he would transmit them to the Committee.

13. On the question raised by Lord Colville, he said that conflict between Macau criminal law and that of neighbouring jurisdictions was a serious problem, complicated by the fact that such laws contained clauses on extraterritorial application. That could lead to very unfair situations. Thus, when a ferry between Hong Kong and Macau had recently been hijacked by a

gang of three persons, one had eventually been caught in China, one in Hong Kong and the other in Macau. Because each jurisdiction had refused to hand over its criminal to any other jurisdiction, different penalties had been imposed on each one. Efforts were being made to solve that problem through interregional legal assistance.

14. Lord Colville had also been concerned that the system of having different ways of classifying the same crime might lead to violation of the principle of non bis in idem. If the crime concerned occurred in Macau, it would definitely not be brought to court in violation of that principle, irrespective of how it was classified. The non bis in idem principle was guaranteed under the Basic Law.

15. It was true that membership of a secret association or society might not necessarily constitute a crime, and it would be ultimately for the public prosecutor and the judge to decide the matter. So far there had been no reason to think that Macau's judicial system would not be able to handle such a situation. While he was not able to predict how that system might evolve after December 1999, the fact that several Portuguese judges of more than 20 years' experience were to remain in office pointed to the likelihood that the same approach would be followed as in the past.

16. He fully shared Mr. Klein's concern that the human rights situation in Macaú should not deteriorate in the future; Portugal was doing all it could to ensure that a large umbrella of protection remained. While he was not very confident that any Portuguese constitutional provisions would remain in force, some structural features of the system which reflected the provisions of treaties or international law and had been consistently applied, were expected to remain on the principle that the continuity of the judicial system should be maintained.

17. In reply to Mr. Klein's question whether laws that contravened the Basic Law had been identified, he said that, as in the case of Hong Kong, a preparatory committee had been set up to establish mechanisms for the transition. One of its tasks had been to draw up a list of laws that would not continue in force. As he understood it, there were only about 15 laws on the list, and none of them related to human rights or fundamental freedoms.

18. On the question concerning the duration of pre-trial detention, he said that for serious offences the maximum period allowed by law was three years; for lesser offences the maximum period was six months. The decision to order pre-trial detention must be taken by a judge. Detention pending a decision by the judge on whether there was sufficient evidence to proceed could be for up to 10 months, and detention pending a decision by a court of first instance could be for a period of 18 months to 2 years. Detention until a final decision was taken by an appeal court could be for a period of two to three years.

19. In reply to the question on religious freedom raised in connection with paragraph 24 of the report, he said that any law expressly forbidding certain acts would have to comply with the Portuguese Constitution, and hence also with the Covenant.

20. Concerning the issue of dual nationality, he said that some 105,000 residents of Macau had Portuguese nationality. Of those 85 per cent were ethnic Chinese, most of whom did not speak Portuguese and had no connection with Portugal, but had benefited from being born in Macau when the territory had been considered part of Portugal for nationality purposes. Although Portugal could have changed the dual nationality law, it had never done so and, moreover, had stated publicly on a number of occasions that it had no intention of doing so in future. The question at issue was whether such persons would continue to enjoy dual status after 20 December 1999, when Chinese nationality law would be applied. Portugal had over many years tried to convince China that any such persons should not be forced to opt for one country or the other. He stressed that the decisions he had referred to earlier had been taken unilaterally by the Chinese authorities and were in no way the result of an agreement with Portugal. It was China, not Portugal, which now sought to make a distinction between those persons holding dual nationality who were of Portuguese origin and those who were not. Portugal had always considered itself bound under its Constitution not to discriminate between its nationals on grounds of ethnic origin.

21. Mr. Scheinin had asked whether any positive programmes had been introduced to deal with the problem of trafficking in women. While Macau would, of course, take such a problem seriously, it did not see the need to set up any specific programme since very few cases of trafficking had ever arisen, and only two had occurred that year.

22. In reply to the question relating to paragraph 6 of the report, as to whether humanitarian organizations would be authorized to provide assistance for illegal immigrants, he said that while in theory there was no law against providing such assistance, in practice it would not be feasible since the policy was to send illegal immigrants back as soon as possible, usually within 72 hours. Immigration had led to a doubling of the population of Macau over the past 17 years, which explained why local residents were strongly opposed to a more lenient approach to the problem.

23. Turning to the question concerning crimes against the State, he said there was no doubt that new legislation on the matter would be adopted in the future, but his delegation could not predict what it might be.

24. In reply to the question raised by Ms. Chanet as to whether there was any law prohibiting the death penalty, he said that Portugal had twice informed the Committee that not only had Macau been the first jurisdiction in Asia to abolish the death penalty in 1842, but also article 39 of the Criminal Code prohibited imposition of the death penalty for any crime. On a further point, he said that Macau did not have any specific law regulating a state of emergency under which fundamental rights could be suspended. On the other hand, situations of natural disaster were regulated under article 19 of the Portuguese Constitution, which applied to Macau.

25. On the question how application of the Covenant was to be guaranteed, he said that declarations would shortly be made by both Portugal and China concerning their commitment to a number of human rights treaties, including the Covenant. It was expected that both countries would then transmit the appropriate notifications to the Secretary-General of the United Nations. The

provisions of the Covenant would continue to prevail over the provisions of ordinary law because that was already a structural feature of the legal system. Indeed, many of the codes under that system, including the Criminal Code, contained provisions which began with the formulation "Unless otherwise regulated in an international instrument applied in Macau".

26. He fully agreed that many of the recent laws referred to in the report should have been adopted earlier. Nevertheless, a great deal of work had been done to guarantee Macau a high level of protection in terms of fundamental rights and freedoms, and his Government believed that it had nothing to be ashamed of in that regard. Not only had such laws been passed, but great efforts had been made to enforce them at a practical level.

27. In reply to a question from Mr. Amor, he explained that there was no Macau passport. Paragraph 4 (n) of the report merely intended to update the information concerning the authority, held by the Governor until recently, to issue Portuguese passports, and also passports for foreigners who had no travel documents, which indicated that the holder did not have right of abode in Portugal. That authority, transferred to the Portuguese Consul-General in Macau in mid-1999, was very important for Macau, whose inhabitants, most of them ethnic Chinese from various countries, would be living in the Special Administrative Region (SAR) as from next December.

28. In response to another question from Mr. Amor, he said there were various labour unions, which protected the rights of thousands of workers, many of whom were non-permanent residents. A 1998 law had established special measures and rules to be enforced by the Governor. Although finalization of the relevant laws had been assigned priority, they had not been completed, because of the many labour rights proposals pending before the Standing Committee on Coordinating Social Affairs. The labour unions were subject to corporate law, which imposed heavy fines for criminal liability.

29. Although religious freedom was established in Law 5/98/M on religious belief and worship and the profession of faith, there were factors relating to freedom of belief that were not rigidly regulated. No restrictions whatsoever were imposed on individuals or informal religious groups, but registration was required of larger and more formal groups, and made them juridical persons, thereby entitling them to tax deductions and other benefits. Proselytism was not regulated by any specific provision, but was covered in general by Law 5/98/M.

30. Macau had long been a sanctuary for refugees, from the time of the Japanese invasion of China onwards. It had taken in others from East Timor and China itself, and some 10,000 "boat people", most of whom had received assistance from religious organizations. The data furnished in the third periodic report, to illustrate Macau's religious pluralism, were still relevant.

31. In reply to the question on the right of petition and its regulation of the political rights of so-called "foreigners", he said the sole intent of the concept of citizenship was to link a person to a State. That intent was apparent in certain regulations governing the rights of Macau's local Portuguese citizens. The concept of residence was at the heart of the system,

while an array of regulations governing political rights bestowed them only on permanent residents of Macau. Other issues relating to non-permanent residents were also governed by the right of petition.

32. He was unaware of any arrangement for police officers from China to arrive in Macau in time for the 20 December handover ceremony. Army personnel had apparently arrived in Hong Kong in time for the handover there. He would not speculate on the matter.

33. Responding to another question from Mr. Lallah, he said the right of abode had quite recently sparked media interest insofar as it concerned the Hong Kong SAR. The Basic Laws relating to the two Territories embodied the same principle denying any entity, in either of the SARs or elsewhere, the right to appeal against a decision of the Court of Final Appeal. Article 145 of Basic Law entitled that Court to put any interpretation it wished on the articles of the Basic Law, for purposes of hearing an appeal against a judgement of another court. In Hong Kong it had seized that opportunity to amend the article it was supposed to interpret, as opposed to the court decision originally submitted to it for examination. It would probably do the same in Macau. Interestingly, although the Basic Law was the law of the land in the Macau SAR, and had effect in China, its article 145 firmly denied the Macau High Court of Justice that same authority of interpretation.

34. He would be happy to answer any further questions and looked forward to continued cooperation with the Committee.

35. Mr. KLEIN said he still had two concerns. Pleased as he was to learn that only the 15 or so laws mentioned in appendix I would be certain to violate the Covenant, the Committee should be told which those laws were. The delegation's explanation had not allayed his fear lest Portugal's failure to convince the Chinese authorities to change their nationality policy should undermine the status of Macau residents. He would also like to know whether "Portuguese ancestry" was an official term denoting only descendants of white Europeans, or whether it was also applied to Portuguese from the country's former colonies.

36. Lord COLVILLE said while he appreciated the detail and clarity of the delegation's replies, he still had one major concern about Law 6/97/M of 30 July 1997. For instance, one could imagine that a leader of a triad society that specialized in falsification of credit cards had been arrested. For lack of evidence linking him directly to that specific offence, he could be convicted under the generic law and serve his sentence. One would, of course, speculate on how the Chinese courts would interpret the law, but one could imagine that, once the prisoner had been released, the Chinese authorities might call for his extradition to China to be tried there for the same offence, on the grounds that they had found sufficient new evidence to link him to that specific offence. Since the person had not been convicted of that specific offence in Macau, would the authorities there refuse to extradite him on grounds of non bis in idem?

37. It would surely be preferable for him to be tried in Macau for the specific, and not the generic, offence, in order to avert the risk of a

request from China for his extradition for a second trial, which would be tantamount to non bis in idem. He would like to hear the delegation's views.

38. Ms. CHANET said the delegation had not commented on her observations on the lack of participation of NGOs in the preparation of the report, or on Committee members' remarks on the problems posed by paragraph 6 of Law 6/97/M. She inquired about the status of the death penalty, in connection with Portugal's failure to issue a Sino-Portuguese declaration, similar to the Sino-British Joint Declaration. No reference had been made to the Covenant in that connection, all the emphasis having been placed on the Basic Law. Neither had mention been made of the first Optional Protocol, or the second Optional Protocol aiming at the abolition of the death penalty, to which Portugal was a State party.

39. Mr. HENKIN commended the delegation's impressive presentation. He asked whether a decision had been reached on the future status of the citizens of Macau under the Optional Protocol. He welcomed the broad principle of continued enjoyment of their current level of protection. He would, however, have liked the delegation to give the Committee its assurance that they would still enjoy the substantial protection afforded them under the Optional Protocol. The delegation might also have declared its adherence to a general principle whereby Portugal would continue to fulfil its obligations under international law. Such a principle would undoubtedly prompt nice questions relating to succession and to the Committee's position of principle, which required that no human being must ever be deprived of a previous right. Why were the people of Macau now faced with that risk? Was it inevitable?

40. Mr. COSTA OLIVEIRA (Portugal) said he regretted having only an informal list of the laws to which Mr. Klein had referred, particularly since the transitional period would end in under 60 days, and some of those laws concerned the draft resolution to be submitted to the Standing Committee of the National People's Congress of China. The Chinese authorities had not responded to the request that the list should be transmitted to Macau, and he could not guarantee that the informal list in his possession was the one that would eventually be put to the National People's Congress. He would ensure that the final list was forwarded to the Committee once it had reached Macau. Since the Preparatory Group had completed its work, it was unlikely that any law would be added to or taken off the list.

41. Although Portugal had raised the nationality question early in the discussions of the Joint Liaison Group, 12 years later it had not been settled. The Portuguese authorities assigned the highest priority to nationality. And although, like any round of talks dealing with a variety of issues, the Group's discussions had involved trade-offs, Portugal had made no concession on what it considered to be a crucial matter of principle. It would accept no solution that discriminated between its citizens.

42. The concept of "Portuguese ancestry" had first appeared in the Joint Declaration, and had been incorporated into the Basic Law; he could not say how it would be interpreted after the handover. The term, as applied by the Chinese authorities, clearly referred to mixed-race Macaunese of Portuguese descent, which did not preclude it from being applied in future to local non-Han Chinese who were currently Portuguese nationals.

43. Membership of a secret society was an offence of "abstract danger" and had no relation to a criminal offence. Only on production of hard evidence that a secret society was engaging in credit-card forgery would the hypothetical case described by Lord Colville raise the question of non bis in idem. In that event, prosecution in Macau would be more judicious than extradition. Many cases undoubtedly posed that risk, but it would occur in any country that entertained the legal concept of "abstract danger", not only in Macau.

44. Responding to Ms. Chanet's question, he acknowledged that there were no militant NGOs in Macau, no doubt because most of its habitants had been latecomers and felt no strong emotional attachment to the territory. Nonetheless, although the Administration had consulted the NGOs, only Amnesty International, to the best of his knowledge, had made any contribution.

45. Although a prohibitive clause on capital punishment had been included in the Criminal Code, it was obvious that the Portuguese and Chinese held different views. The death penalty had been mentioned neither in the Joint Declaration nor, specifically, in the Basic Law; however, it had been referred to in the Criminal Code.

46. He was not really qualified to answer Mr. Henkin's interesting question of public international law, although it was true that no mention had been made of the first Optional Protocol in the talks between the Portuguese and Chinese authorities. Neither side had, thus far, stated its position, and he had received no instructions from his Government.

47. Mr. KLEIN, referring to the delegation's reply to Mr. Henkin's question, said he had gained the impression that Portugal had not fully assumed the responsibility for the people of Macau placed on it in the Covenant.

48. Mr. HENKIN said he was pleased that the Portuguese representative had implied that his contact with the Committee would continue in writing after his return home.

49. Ms. CHANET concurred with the remarks of the two previous speakers.

50. The CHAIRPERSON said the Committee was concerned about the welfare of the people in Macau and wished to protect their civil and political rights. While she believed Portugal had made genuine efforts in that regard, she felt that the residents of Macau had originally been of so little concern to Portugal that it had failed to secure any reference in the Basic Law to such important issues as the death penalty and the Optional Protocol. She hoped the delegation would convey to the Portuguese authorities the Committee's profound concern at their failure to place sufficient emphasis on those two important issues, and the need to ensure that they were addressed in any agreement it might conclude with China.

51. An international obligation was not the same as a bilateral agreement undertaken by a country that maintained a special relationship with Macau. Inasmuch as the delegation had not explained the absence of any reference in article 145 of the Basic Law to articles 6 and 14 of the Covenant, she would

ask the delegation to convey the Committee's concern to the authorities. It should also impress upon them that any possibility of misinterpretation of the provisions of article 14 must be avoided at all costs in the context of the process of transition.

52. Despite her serious misgivings about the evident violation of the Covenant by the provisions cited in paragraphs 6, 7 and 40 of the report, she welcomed the Portuguese authorities' efforts to comply with it.

53. She still had misgivings about the issue of extradition and was particularly concerned about the problem of trafficking in women. The Portuguese Government did not seem to have fully understood its obligations in that context, which were not only to prosecute and punish the guilty, but also to protect the victims and generally endeavour to improve the status of women in Macau. The concerns she had listed were her own personal ones; the Committee would formulate its concluding observations in due course and would forward them to the Portuguese Government, which, she hoped, would distribute them to the population of Macau. In conclusion, she thanked the Portuguese delegation for its participation in the dialogue with the Committee.

54. Mr. COSTA OLIVEIRA (Portugal) thanked all members of the Committee for their interest and generally positive assessment of the system currently in force in Macau. It was understandable that some concerns should be outstanding at the end of the transitional period preceding the transfer of the territory to Chinese rule. Throughout the transition process, his Government had done its best to secure China's consent to specific guarantees of continuity. If some problems remained unresolved, that was because Portugal could not force China to accept all its principles. The well-being of the population of Macau had been his Government's chief concern at all stages of the process. The main difficulty with the human rights situation in the territory dated back to the pre-1974 period of dictatorship in Portugal; the problem was not a colonial one, as the situation in Portugal itself had been no better. It would be unjust not to acknowledge the high degree of concern with the protection of human rights shown by his Government since the return to democracy, and especially since 1976. The fact that the Basic Law did not guarantee a higher degree of protection of human rights was regrettable, but it should be remembered that that Law had been framed by China alone, Portugal's powers in that regard being very limited. His Government believed that it had fully complied with its obligations under the Covenant and hoped that the tradition of dialogue with the Committee would be continued after the transfer of authority had taken place.

55. The Portuguese delegation withdrew.

The meeting was suspended at 12.25 p.m. and resumed at 12.40 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 7) (continued)

Draft general comment on article 3 of the Covenant (continued) (CCPR/C/65/R.10)

56. The CHAIRPERSON invited members to resume their consideration, paragraph by paragraph, of the draft general comment on article 3 of the Covenant (CCPR/C/65/R.10).

Paragraph 19

57. Mr. KLEIN remarked that the drafting of the first sentence could be improved.

58. Mr. KRETZMER wondered whether the first sentence should not be dropped altogether. As already pointed out in connection with an earlier paragraph, he did not think it appropriate to attach special significance to any one right in the context of gender equality.

59. The CHAIRPERSON, speaking as Rapporteur for the draft general comment, explained that her intention had been to draw attention to a right that was widely disregarded.

60. Mr. LALLAH proposed that the first sentence should be replaced by the following: "The right to participate in public life is not implemented everywhere on an equal basis."

61. Mr. KRETZMER and the CHAIRPERSON agreed to that suggestion.

62. Mr. YALDEN said that he had some difficulties with the last part of the second sentence. Did the expression "affirmative action" mean quotas? That would be the interpretation given to it in the countries of North America and, unless he was mistaken, also in the United Kingdom. He personally was opposed to the imposition of quotas, as indeed were many women who wanted their participation in the conduct of public affairs to be based entirely on merit. If the term had a different meaning in the context of the paragraph under consideration, that meaning should be spelled out more clearly.

63. Ms. EVATT said while it was true that affirmative action was often construed to mean quotas, that was not necessarily the case. Affirmative action could also take the form of bringing pressure to bear on political parties to select women candidates and to give them a genuine chance of being elected. Would the expression "effective and positive measures" be acceptable to all members?

64. Mr. SCHEININ considered that not all quotas gave rise to problems of the kind referred to by Mr. Yalden. He would not wish to see the passage in question deleted, and wondered whether the objection could not be overcome by replacing the words "if necessary" by "where appropriate".

65. Mr. AMOR suggested that the expression "affirmative action" should be replaced by "positive measures".

66. Ms. CHANET agreed with that suggestion and also with Mr. Lallah's proposal for the first sentence. The reference to "statistical information" in the third sentence should, she thought, be spelled out in more detail; what the Committee wanted was statistical information on women's participation at a certain level of public office, whether through election or by appointment. She suggested that the third sentence should be moved to the end of the paragraph. As to the fifth sentence, she thought it odd that the enumeration of positive measures did not include education. A more general formulation would, in her view, be preferable.

67. Mr. SOLARI YRIGOYEN, while agreeing with Mr. Yalden that the expression "affirmative action" could be wrongly understood to mean only quotas, said that he was strongly in favour of including a reference to positive action designed to overcome the present state of affairs in which women accounted for a disproportionately small part of the membership of national parliaments.

68. Mr. HENKIN proposed that the words "the necessary" in the second sentence should be deleted and that the last part of the sentence should be redrafted to read: "including, when necessary, special positive measures to that end".

69. The CHAIRPERSON, summing up the discussion on paragraph 19, said that the Committee had endorsed Mr. Lallah's proposal for the first sentence, Mr. Henkin's suggestions for the second sentence and Ms. Chanet's suggestion that the third sentence should be expanded and placed at the end of the paragraph.

The meeting rose at 1.05 p.m.